UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

JUAN OROZCO,	)	
Plaintiff,	)	Case No. 3:09-cv-00752
	)	
vs.	)	Judge Thomas Wiseman
	)	
CITY OF MURFREESBORO,	)	Magistrate Judge E. Clifton Knowles
Defendant.	)	
	)	Jury Demand

CITY OF MURFREESBORO'S
MEMORANDUM IN SUPPORT OF
MOTION FOR JUDGMENT ON THE PLEADINGS

Comes now the City of Murfreesboro (hereinafter "City" or "the City") and submits this Memorandum in Support of its Motion for Judgment on the Pleadings.

The United States Supreme Court has recently decided two cases on the pleading requirements under the Federal Rules of Civil Procedure: Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007), and Ashcroft v. Iqbal, ____ U.S. ___, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009). When the standard from these cases is applied to the Complaint, it is apparent that Plaintiff has not pled, as is required, factual allegations sufficiently plausible to show an entitlement to relief and to unlock the doors of discovery.

A. STANDARD OF REVIEW.

A Motion for Judgment on the Pleadings and a Motion to Dismiss are functionally identical and both are analyzed under the standards established for a 12(b)(6) dismissal motion. *See* United States ex. rel. Bledsoe v. Cmty. Health Systems, Inc., 342 F.3d 634, 643 (6th Cir.2003).

As mentioned above, the recent cases of Twombly and Iqbal have direct guidance on the sufficiency of pleading in the Plaintiff's Complaint. Because of its newness, the City quotes Iqbal at length to best describe the applicable standard:

> Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." As the Court held in Twombly, 550 U.S. 544, 127 S.Ct. 1955, 167 L.Ed.2d 929, the pleading standard Rule 8 announces does not require "detailed factual allegations," but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation. Id. at 555, 127 S.Ct. 1955 (citing Papasan v. Allain, 478 U.S. 265, 286, 106 S.Ct. 2932, 92 L.Ed.2d 209 (1986)). A pleading that offers "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." 550 U.S., at 555, 127 S.Ct. 1955. Nor does a complaint suffice if it tenders "naked assertion[s]" devoid of "further factual enhancement." Id. at 557, 127 S.Ct. 1955.
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> To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." Id. at 570, 127 S.Ct. 1955. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. Id., at 556, 127 S.Ct. 1955. The plausibility standard is not akin to "probability requirement," but it asks for more than a sheer possibility that a defendant has acted unlawfully. *Ibid*. Where a complaint pleads facts that are "merely consistent with" a defendant's liability, it "stops short of the line between possibility and plausibility of 'entitlement to relief.'" Id. at 557, 127 S.Ct. 1955 (brackets omitted).
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> Two working principles underlie our decision in Twombly. First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice. Id. at 555, 127 S.Ct. 1955 (Although for the purposes of a motion to dismiss we must take all of the factual allegations in the complaint as true, we "are not bound to accept as true a legal conclusion couched as a factual allegation" (internal quotation marks omitted)). Rule 8 marks a notable and generous departure from the hyper-technical, code-pleading regime of a prior era, but it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions. Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. Id. at 556, 127 S.Ct. 1955. Determining whether a complaint states a plausible claim for relief will, as the Court of Appeals observed, be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. 490 F.3d, at 157-158. But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has

> alleged-but it has not "show[n]"-"that the pleader is entitled to relief." Fed.Rule Civ. Proc. 8(a)(2).
>
> In keeping with these principles a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.

The Iqbal Court then applied this standard to the allegations in the complaint before it and held that it failed to state a claim and should be dismissed.

The Supreme Court in Iqbal first identified the allegations in the complaint that were not entitled to the assumption of truth because they were bare assertions which amounted to nothing more than a "formulaic recitation of the elements" of a claim (quoting Twombly, 550 U.S. at 555). The Court stated that it was the "conclusory nature" of the allegations "that disentitles them to the presumption of truth." Iqbal, 129 S.Ct. 1937, at 1951. It placed in this category the allegation in the complaint that the actions taken against Iqbal were "…solely on account of [his] religion, race and/or national origin and for no legitimate penological interest." Id.

The Supreme Court then considered "the factual allegations in respondent's complaint to determine if they plausibly suggest an entitlement to relief." Iqbal, *supra*. It looked to certain specific factual allegations with reference to the nub of the complaint to determine if the well pleaded facts, if accepted as true, plausibly suggested unlawful acts or if there was a compatible or more likely explanation that did not support an entitlement to relief. The Court pointed out that the gravamen of the Iqbal complaint was not that the Iqbal respondent's arrest was the result of unconstitutional discrimination, but that the policy of classifying certain detainees as high risk and of holding them in restrictive confinement was intentionally adopted because of their race, religion or national origin and constituted purposeful discrimination. The Court found that the pleadings lacked factual allegations about the discrimination as to the policy and thus did not meet the standard of FRCP 8.

The Iqbal Court further held that when a complainant fails to plead sufficient facts to state a claim under Rule 8 "he is not entitled to discovery, cabined or otherwise." Iqbal at 1954.

B. INSUFFICIENCY OF PLAINTIFF'S COMPLAINT.

The Plaintiff in this case has alleged that his claim is based on 42 USC §2000e-2 and that his race or national origin (Hispanic) was a determining factor in the City's decision to discharge him (Complaint, ¶ 2,5,17,18). To state a claim for race or national origin discrimination, the Plaintiff must support this legal assertion with factual allegations which, accepted as true, would state a claim to relief that is plausible on its face. A claim for relief for Title VII race or national origin disparate treatment discrimination must therefore allege facts which taken as true would make a plausible claim for intentional discrimination through direct or circumstantial evidence. In evaluation of facial plausibility, Iqbal and Twombly state that the plaintiff must plead "factual content that allow the court to draw the reasonable inference for the misconduct alleged" and that the Court is "not bound to accept as true a legal conclusion couched as a factual allegation." If only the mere possibility of misconduct can be inferred from the facts, the pleader has not met the applicable standard.

The allegation that Plaintiff's race or national origin was a determining factor in the City's decision to discharge him is a legal conclusion and therefore is not entitled to the presumption of truth. The Complaint must support this legal conclusion with the allegations of facts which plausibly could be direct evidence of race or national origin discrimination or which plausibly could do so circumstantially. The Complaint contains no factual pleadings relative to any direct evidence of discrimination against the Plaintiff because he is of Hispanic descent. The Complaint therefore must be reviewed to determine if it alleges circumstantial facts which, if taken as true, allow a plausible inference of illegality and state more than a mere possibility of misconduct.

The Complaint alleges that a complaint of harassment led to an investigation of Plaintiff's department, which led to the filing of 15 charges of violations by Plaintiff of various City policies. Complaint, ¶ 8. The Complaint alleges that an additional 12 charges of violations of various City policies were made after Plaintiff requested a disciplinary hearing. Complaint, ¶ 10. The Complaint alleges that Plaintiff received a disciplinary hearing pursuant to the City's policies. Complaint, ¶ 9. The Complaint alleges that, at the disciplinary hearing, the Plaintiff denied the majority of the charges brought and presented proof that the department was well run. Complaint, ¶ 11. The Complaint alleges that "despite the proof presented at Plaintiff's disciplinary hearing rebutting the charges against Plaintiff, Mr. Haley [the then City Manager] made the decision to terminate Plaintiff's employment." Complaint, ¶ 12. The Complaint alleges that the Plaintiff's position was filled by a white male before his disciplinary hearing was held. Complaint ¶ 13.

Assuming these factual assertions to be true, Plaintiff's Complaint states that the City conducted an investigation for a legitimate and non-discriminatory reason (a complaint of harassment) and that this led to charging the Plaintiff with 27 violations of his employer's policies. Following a hearing on these charges, where Plaintiff denied "the majority" of the charges brought, he was terminated.

Plaintiff did not allege that all of the charges against him were factually false and that his employer knew them to be false. Nor does the Plaintiff allege that these charges did not actually motivate his discharge. Nor does he allege that these charges were insufficient to be a basis for his discharge. Plaintiff does not identify or describe any of the charges which were made nor does he identify or describe the ones upon which he was told his termination was based. Absent specific factual allegations as to the lack of merit as to the charges on which he was dismissed, Plaintiff has not stated a plausible circumstantial claim for relief.

The Complaint does contain a conclusory statement relative to the charges. A bare assertion, formulaic in nature, is found in paragraph 14: “Other, non-minority, department heads and supervisors have violated City policies in identical, similar or a more egregious fashion and received lesser discipline than termination; while minority employees have consistently received greater discipline for violations of City policies.” No specific facts are pled in support of this assertion. The “department heads and supervisors” are not identified. The “City policies” the department heads and supervisors “violated” are not identified. Since the department heads and supervisors are not named, it is not possible to infer that they are “non-minority”. Only if they are non-minority is an inference that intentional discrimination explains different discipline plausible. Since neither the policies the Plaintiff was alleged to have violated nor the policies alleged to have been violated by the unnamed department heads or supervisors are identified or described in the Complaint, it is not possible to say whether the policy violations are similar. Since only similar violations would allow an inference that the City was treating similar violations differently because of the race or national origin of the violator, there are insufficient factual allegations to plausibly state a claim upon which relief can be granted.

At paragraph 11 of the Complaint, the Plaintiff stated “At the disciplinary hearing, Plaintiff denied the majority of the charges brought and also noted that other departments were beset with similar if not identical problems, yet were not the subject of disciplinary proceedings.”

Although this is simply a statement about what the Plaintiff says he said at the disciplinary hearing, to the extent it can be deemed a repetition of the claim made in paragraph 14 of the Complaint, the same objections apply. It is a conclusory assertion; no facts are pled which are sufficient to allow the Court to draw a reasonable inference that the City has acted unlawfully. (The City would additionally note that "departments" cannot be "the subject of disciplinary hearings".)

C. CONCLUSION

For the foregoing reasons and arguments raised above, the City requests that this Court enter an Order dismissing all claims against it and entering judgment in its favor, with costs for this matter taxed against the Plaintiff.

Respectfully submitted,

/s/ William E. Squires______________

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Memorandum in Support of Motion for Judgment on the Pleadings was served via electronic filing this the 12th day of October, 2009 upon:

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and further that a true and exact copy of the foregoing Memorandum in Support of Motion for Judgment on the Pleadings was served via U.S. Mail, First Class and postage pre-paid this the 12th day of October, 2009, upon:

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/s/ William E. Squires_______________
William E. Squires